



United States
Department of
Agriculture

Farmers
Home
Administration

Washington
D.C.
20250

FmHA AN No. 1172 (1951)

April 4, 1985

SUBJECT: Availability of Special Debt Set-Aside Relief
to a Borrower Who Has Filed a Petition Under
Chapter 11 of the Bankruptcy Code.

TO: All FmHA State Directors; Chiefs, Farmer Programs;
District Directors and County Supervisors

Purpose/Intended Outcome:

This Administrative Notice (AN) is to repeat what a number of you have already been told by members of FmHA National Office staff concerning the availability of Special Debt Set-Aside relief to a borrower who has filed a petition under Chapter 11 of the Bankruptcy Code.

Section 1951.41(b) of FmHA Instruction 1951-A contains a list of farm loan borrowers who should not have been sent the special debt set-aside notice. The regulation does not state that those borrowers are ineligible for the set-aside itself. A borrower who did not receive a notice can still come into an FmHA office and apply for a set-aside. That borrower may not qualify under the criteria listed in §1951.41(d), but that is another story.

Implementation Responsibilities:

Section 1951.41(b)(5) states that borrowers who are currently under the jurisdiction of a bankruptcy court will not receive a special debt set-aside notice. This exception has generated a lot of inquiries. When a borrower comes into an FmHA office and states that a Chapter 11 or 13 bankruptcy proceeding is pending but wants to be considered for a set-aside anyway, that borrower should be given two options. One is to have the bankruptcy proceeding dismissed first and then to come back and apply for the set-aside. The other is to go to the bankruptcy court and obtain a protective order allowing FmHA to consider the borrower for set-aside and also allowing the borrower to sign necessary agreements if FmHA determines that the borrower is eligible for a set-aside. The securing of such a protective order is the responsibility of the borrower and the borrower's attorney. The reason for FmHA's not dealing with the borrower without such an order is fear of violating the "automatic stay" provisions of the Bankruptcy Code which prevent FmHA from taking any action to collect its debt from the borrower.

EXPIRATION DATE: September 30, 1985

FILING INSTRUCTIONS: Preceding
FmHA Instruction 1951-A



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Secretary of Agriculture, Washington, D.C. 20250

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Sometimes a borrower may just put a bare statement in the proposed plan of reorganization such as "I want to receive a special debt set-aside from FmHA." This is unacceptable. However, a borrower may go ahead and write out the terms of the set-aside in the reorganization plan. Rather than automatically rejecting it, FmHA should consider whether the plan is feasible with those particular terms in it. If not, you should recommend to the Office of General Counsel (OGC) that the plan be rejected. If, on the other hand, it does appear feasible, you may want to recommend to OGC that the plan be approved or at least that no objection to it be made. To decide whether or not a plan is feasible, you should not use the set-aside regulation's standards. Instead, simply evaluate the plan as you would if there were no set-aside regulation.

Dwight O. Calhoun
DWIGHT O. CALHOUN
Acting Associate Administrator

Sent via electronic mail on April 4, 1985 at 3:53 pm. by DASD/IMP.
This message should be promptly distributed to all District Directors and County Supervisors.